

**BEFORE THE STATE ELECTION BOARD
STATE OF GEORGIA**

In the matter of:

**FULTON COUNTY BOARD OF
REGISTRATION AND ELECTIONS
and RICHARD BARRON, in his official
capacity**

Respondents.

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**SEB Cases 2020-016
and 2020-027
Fulton County**

CONSENT ORDER

The State Election Board and Respondents Fulton County Board of Registration and Elections and Elections Director Richard Barron (collectively, “Respondents” or “BRE”), hereby enter into the following Consent Order for use in SEB Cases 2020-016 and 2020-027 before the State Election Board in lieu of an evidentiary hearing.

FINDINGS OF FACT and CONCLUSIONS OF LAW

The findings of fact and conclusions of law set forth in the following Paragraphs 1 through 9 have been asserted against Respondents. The SEB and the Respondents agree that there is no evidence of any willful misconduct but desire that the above-captioned cases be resolved in their entirety in order to avoid further litigation. Respondents and the SEB acknowledge that there is evidence of a *prima facie* case supporting the following assertions and enter into this negotiated Consent Order to resolve the issues that arose leading up to and including the June 9, 2020 general primary.

INTRODUCTION

The primary election in Georgia, originally scheduled for March 24, 2020 and eventually held on June 9, 2020, was monumentally challenging for election officials throughout the State of Georgia. The combination of an unexpected pandemic and the fear of the unknown health

dangers the pandemic posed, the substantial increase in the number of voters (including the explosive growth in the number of absentee by mail voters), implementing new voting machines at the early voting and election day polling locations, and the number of contested races on the ballot – all of these converging factors led to hurdles that had never before been envisioned or encountered by election officials. These challenges occurred throughout the State of Georgia, in fact, throughout the country. Not a single county in Georgia was untouched by the pandemic and its consequences. However, the majority of complaints and issues arose from Fulton County.

Fulton County's June 9 primary election was beset with problems. Historically long lines were experienced at polling sites. The voting machines were operated by poll workers who were not adequately trained. Poll workers who were scheduled to work on election day (and who were trained) did not report for duty because of the fear of the danger posed by the pandemic. Some supplies and forms that were needed at polling locations were not delivered and in other cases, supplies were delivered, but newly recruited poll workers failed to find them.

The absentee ballot process was besieged with obstacles. Prior to the pandemic the Fulton County Department of Registration and Elections ("DRE") had anticipated that there would be approximately 1,000 absentee ballots, based on prior election data, for the primary. In actuality, 144,000 absentee ballots were requested by voters in Fulton County. The DRE office was particularly hard hit by the pandemic. The Chief Registrar was hospitalized with COVID-19 and another employee passed away. This led to chaos in the absentee ballot process (voters could send emails, or letters, or faxes to request an absentee ballot) and the inability to record every single ballot request without mistakes. An unknown number of people who requested absentee ballots never received a ballot.

Through it all, however, the staff of the Secretary of State and the DRE and its staff worked tirelessly (and at personal risk) in an effort to overcome these unpredicted obstacles and to make sure that every person in Fulton County voted who wanted to vote and that the process functioned as well as possible. In some ways, Fulton County achieved remarkable success. In some ways it did not.

Ultimately, despite the best efforts of the state and the county, there were violations of the election code. While neither the State Election Board nor the Secretary of State's office believes these violations were the result of malicious intent, the fact remains there were violations that resulted in voters not receiving an absentee ballot and there were violations that resulted in voters not being able to vote. Countless voters experienced unacceptably long lines at voting locations.

The State Elections Board filed three separate notices of violations that occasioned hearings on August 27, 2020, September 3, 2020 and September 10, 2020.¹ Following those SEB hearings, referrals were made to the Attorney General's office to further investigate some of the matters.² Immediately thereafter, Respondents' counsel and representatives from the Attorney General's office and the Secretary of State's Office met to resolve these issues. The goal was to reach a Consent Order that had one set of paramount goals: improve the process for the November 3, 2020 election as well as the absentee ballot and early voting process; anticipate the problems that will inevitably arise; plan to solve those troubles; and enhance the ability of the SEB and the State Election staff, BRE, and DRE staff to work together to achieve an election in November that is the envy of the rest of the country. This Consent Order has been reached with that multi-faceted goal in mind.

¹ The three notices of violations are attached as Exhibits A1, A2, and A3.

² The SEB found probable cause to refer violations to the Attorney General for further investigation. The specific violations that were the subject of the referral are listed in Exhibit B.

SEB Case 2020-016

1.

The Secretary of State's office received more than 250 complaints from Fulton County electors that they requested absentee ballots for the June 9, 2020 general primary, but did not receive them. An investigation by the Secretary of State showed that of the approximately 254 complainants, 105 did not have their request entered into the Election Net ("ENET") system to generate the absentee ballot.

2.

The investigation further revealed that at least 107 of the 254 complainants who did not receive their absentee ballot did not otherwise vote in the election. However, because Respondents did not retain paper copies of the applications, there is no log or audit to verify the applications received by Respondents compared to what was entered into ENET. Therefore, the number of electors that were affected is unknown.

3.

Based upon the foregoing, there is sufficient evidence to show that there were violations of O.C.G.A. § 21-2-384(2) based on the failure to properly process absentee ballot applications received via mail and email or properly enter the requests into the ENET system.

SEB Case 2020-027

4.

The Georgia Secretary of State received over 160 complaints regarding election-day issues in reference to the June 09, 2020, general primary in Fulton County. These complaints alleged that Respondents (a) failed to timely open polling locations; (b) failed to provide voting equipment accessible to individuals with disabilities; (c) failed to provide the necessary forms to

polling locations; (d) failed to adequately train poll workers; and (e) failed to provide sufficient equipment to polling locations. An investigation into these complaints by the Secretary of State's office showed sufficient evidence of the following violations of the Elections Code.

5.

There is sufficient evidence to show that at least 12 polling locations were not open and available for voting by 7:00 a.m. on June 9, 2020. Respondents' failure to ensure that polling locations were opened on time violates O.C.G.A. § 21-2-403.

6.

There is sufficient evidence to show that at least two polling locations were not equipped with at least one electronic ballot marking device accessible to individuals with disabilities. Respondents' failure to adequately provide this equipment violates O.C.G.A. §§ 21-2-379.21.

7.

There is sufficient evidence to show that Respondents failed to provide the necessary election-day forms to a majority of polling locations within Fulton County. None of these polling locations were provided with Recap Sheets, leaving poll officers unable to complete the Recap Sheets at the polling locations. There were also reports of polling locations receiving insufficient Numbered List forms, and inner and outer provisional ballot envelopes. Respondents' failure to provide necessary forms violates O.C.G.A. §§ 21-2-401 and State Election Board Rule 183-1-12-6b.

8.

There is sufficient evidence to show that Respondents failure to provide adequately trained poll managers and workers about election procedures. Based upon complainant statements and interviews with poll managers, Respondents did not provide adequate instruction to poll officers and workers in the operation of the new voting equipment, basic trouble-shooting,

set up of the equipment, proper power supply set up, and completion of new forms and closing procedures. Respondents' failure to provide adequate instruction of poll officers and workers violates O.C.G.A. § 21-2-99(a). As explained in the Introduction, the problem with educating poll workers was largely caused by the pandemic, reflecting the unexpected inability to conduct in-person training with the new equipment, coupled with the unexpected exodus of scores of poll workers who were fearful of the dangers of appearing at crowded polling locations.

9.

There is sufficient evidence to show that two precincts (Hapeville and Fairburn) did not receive the correct voting equipment on June 9, 2020, which caused substantial delay at those precincts. Respondents' failure to provide sufficient equipment to polling locations violates O.C.G.A. § 21-2-267 and State Election Board Rules 183-1-12-.09(2) and 183-1-12.11(c).

ORDER

10.

This Consent Order addresses and resolves all matters regarding Respondent in connection with SEB Cases 2020-016 and 2020-027.

11.

The State Election Board, having considered the particular facts and circumstances of this case, inclusive of the within and foregoing Findings of Fact and Conclusions of Law, hereby ORDERS that Respondents cease and desist from further violations of the Election Code. If the remedies that are encompassed in this Consent Order in Paragraphs 12(A) – (F), are implemented, there will be no reprimand issued by the State Election Board.

12.

The State Election Board further ORDERS the Respondents pay a civil penalty of \$50,000, subject to the following: The State Election Board agrees to waive the civil penalty if

Respondents fully implement the following remedial measures for the November 3, 2020, general election (“Election Day”):

(A) Absentee Ballot Procedures.

1. Respondents agree to put in place sufficient resources and procedures with the goal of accurately processing all absentee ballot applications by the close of the next business day after the application is received. “Processing” the application means that the application is entered into ENET, the signature on the application is checked against other signatures on file, the application is accepted or rejected as appropriate (and such acceptance or rejection is entered into ENET), and, if accepted, the ballot (or provisional ballot if appropriate) is issued to the voter at the requested address. Personnel shall also be sufficiently trained in how to cancel absentee ballot requests in ENET and in the importance of entering those cancellations immediately upon receipt.
2. Respondents agree to put in place sufficient resources and procedures to accurately process all returned absentee ballots by the close of business on the next business day after the ballot is received (but no later than 3:00 p.m. on the day after Election Day). “Processing” absentee ballots means the signature on back of the ballot is compared to the signature on the absentee ballot application or other signature on file, the ballot is entered into ENET as accepted or rejected as appropriate, and any required cure notification is sent to the voter if needed. All personnel processing absentee ballots shall be properly trained on how to reject absentee ballots that come in when the

absentee ballot request has been cancelled (i.e. when the voter has voted in person).

3. Respondents agree to put in place sufficient resources and procedures to fully utilize State Election Board Emergency Rule 183-1-14-0.9-.15 Processing Absentee Ballots Prior to Election Day so that all accepted absentee ballots can be scanned by the day after Election Day.
4. Respondents agree to put in place sufficient resources and procedures to fully utilize State Election Board Emergency Rule 183-1-14-0.8-.14 Secure Absentee Ballot Drop Boxes. Respondents agree to arrange for the collection of ballots from drop boxes at least once every 24 hours and to ensure that all drop boxes are properly closed, emptied, and secured at 7:00 p.m. on Election Day. Respondents further agree to process, as described in paragraph (b) all absentee ballots received from drop boxes by the close of business on the next business day after the ballot is received by the elections office.

(B) Poll Workers and Poll Worker Training.

1. Respondents agree to have an available force of at least 2,200 poll officers, along with a sufficient pool of alternate, trained poll officers to fill unexpected absences.
2. Respondents agree to put in place sufficient resources and procedures to adequately train all poll officers and alternates. Such sufficient resources and procedures shall include, but not be limited to:
 - a. Certification for each poll officer and alternate that they completed training.

- b. Dedicated Poll Pad training, including proper steps to be taken when somebody who has requested an absentee ballot shows up to vote in person.
 - c. Dedicated training on proper setup, opening, shutdown, and ballot transfer procedures.
 - d. Dedicated training on all backup procedures (i.e. backup paper pollbooks, backup procedures for pulling up correct ballot on BMD, use of emergency paper ballots, and emergency bin in scanner) to ensure that voting does not stop during voting hours.
- 3. Respondents agree to provide the State Election Board with weekly updates on total poll officers and alternates, training, and allocation plan of poll officers to polling places, including contingency plan for alternate poll officers for the November election, as well as any runoff election in this election cycle.
- 4. Respondents agree to put in place a plan to provide for emergency allocation of poll officers on Election Day should they experience attrition or no shows.
- (C) Advance Voting Locations.** Respondents agree to provide at least 24 fully-staffed advanced in-person voting locations. Respondents further agree to enter the fact that the voter has voted early into ENET at the time that the voter votes.
- (D) Election Day Logistics and Polling Locations.**
 - 1. Respondents agree to provide no fewer than 255 polling locations on November 3.

2. For any polling location that was not previously inspected by the Secretary of State's vendor, Respondents agree to conduct an inspection for infrastructure, accessibility, and security.
3. Respondents agree to provide their plan for Election Day distribution of election equipment (*i.e.*, pollbooks, BMDs, polling place scanners) and poll officers to the Secretary of State's office no later than October 2, 2020.
4. Respondents agree to provide extra equipment and personnel to Election Day polling locations as identified by the Secretary of State's office after plugging Respondent's plan into the MIT Election Data Lab allocation tool.
5. Respondents agree to put in place sufficient resources and procedures (including quality control procedures) to ensure that each polling place has a sufficient amount of emergency/provisional paper ballots (at least 10% of active voters assigned to the polling place), paper backup pollbooks, and all required forms.
6. Respondents agree to staff each polling location with a dedicated staffer who is designated and properly trained as a deputy registrar. Such deputy registrar shall have access to ENET at the polling location and shall be dedicated to determining whether a voter's absentee ballot has been accepted if that voter show up in person, and if the absentee ballot has not been accepted, cancelling the absentee ballot request in ENET before allowing the voter to vote in person.
7. Respondents agree to put in place sufficient resources and procedures to implement a communications plan that allows effective and timely communication from poll officers and technical support personnel at polling

locations to the county elections office and for effective and timely response, including a plan to provide additional equipment or personnel to a polling place in a timely manner.

8. Respondents agree to put in place sufficient resources and procedures to ensure effective line management at all polling locations, with the goal of processing 100 voters per hour at each voting location.

(E) **Technical Support.** Respondents agree to have a dedicated technical support person located in every polling location on Election Day. Such person shall have completed technical support training provided by Dominion and such additional training as deemed necessary by Respondent.

(F) **Audit Preparation.** Respondents agree to put in place sufficient resources and procedures to prepare for and complete a post-election audit, including proper ballot handling, ballot storage procedures, and preparation of a ballot manifest as specified by the Secretary of State's office.

13.

Respondents agree that the State Election Board may appoint an independent monitor who shall monitor progress and compliance with this Order. Respondents agree to fully cooperate with and give all required access to monitor. The monitor shall submit written reports to the State Election Board every seven (7) days from the Effective Date of this Consent Order, providing the status of the implementation of the measures detailed in Paragraph 12 above. The monitor shall be in place through certification of the January 5, 2021 runoff election. The monitor shall be compensated by Respondents for appropriate time spent gathering information and preparing reports at a reasonable hourly rate to be agreed to by Respondents, State Election Board, and monitor.

- (A) The monitor who is appointed has no supervisory authority with respect to any employee of the DRE. The monitor is only authorized to report progress on the remedial measures to the SEB and is required to provide prior notification to respondents of any report to the SEB that includes any notice of non-compliance. The monitor is not authorized to direct any person in Fulton County to perform some duty, or to refrain from performing some duty. The monitor's responsibility is limited to issuing a report to the SEB on a weekly basis between now and the conclusion of this election cycle in January, 2021.
- (B) If the monitor provides notice of any non-compliance, this will *not* serve as prima facie evidence of non-compliance and respondents will be provided an opportunity to respond and to correct any alleged deficiency.
- (C) It is the intent of the parties in agreeing to the appointment of a monitor, that the monitor will assist Fulton County in the reporting about the remedial measures. The monitor will not only assist Fulton County reporting the progress relating to these remedial measures but will *also* alert the SEB and the state elections office to measures that the state can implement to effectuate these remedial measures and to assure the optimum election procedures that are possible.

14.

Respondents have been provided with a copy of this Consent Order and have acknowledged that they understand the contents. Respondents understand that they have a right to a hearing in this matter. Respondents knowingly and voluntarily waive such right to a hearing, as well as any other rights under the Georgia Administrative Procedure Act pertaining to notice and hearing for contested cases, by entering into this Consent Order.

15.

This Consent Order is entered in settlement of disputed matters, and the Consent Order entered herein is not to be construed as an admission of guilt or liability on the part of Respondents but is entered herein to resolve the referenced State Election Board cases. This Consent Order is a civil settlement and has no criminal ramifications.

16.

This Consent Order shall not become effective unless and until approved by the State Election Board. If not approved by and executed on behalf of the State Election Board, neither the stipulations nor any other part of this agreement shall have any binding legal effect whatsoever and shall not constitute an admission against interest or prejudice the ability of either the State Election Board or Respondents to adjudicate this matter.

17.

In the event of any conflict with any Performance Enhancement Plan (PEP) proposed by the Secretary of State's office, compliance with this Consent Order shall be deemed to be compliance with the PEP.

18.

In the event of force majeure outside Respondents' control, the State Election Board agrees that it will not assess the proposed civil penalty even if the remediations in this Consent Order are not fully remediated by the November 3, 2020 as long as Respondents exercise their best efforts to remain as compliant as possible with this Consent Order. For purposes of this paragraph, the COVID-19 pandemic, significant increase in voter turnout, and significant increase in absentee ballots shall not be considered a force majeure.

This _____ day of _____, 2020.

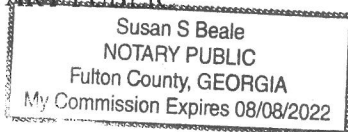
FULTON COUNTY BOARD OF REGISTRATION AND
ELECTIONS

BY:

Mary Carole Cooney
MARY CAROLE COONEY
CHAIRPERSON

Sworn to and subscribed
before me this 12th day
of October, 2020.

Susan S. Beale
NOTARY PUBLIC



RICHARD BARRON
ELECTIONS DIRECTOR

Sworn to and subscribed
before me this ____ day
of _____, 2020.

NOTARY PUBLIC

Approved by the State Election Board this ____ day of _____, 2020.

STATE ELECTION BOARD

BY:

BRAD RAFFENSPERGER
CHAIRPERSON

Consented to:

FULTON COUNTY BOARD OF REGISTRATION AND
ELECTIONS

BY: _____
MARY CAROLE COONEY
CHAIRPERSON

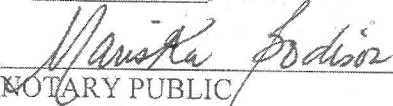
Sworn to and subscribed
before me this _____ day
of _____, 2020.

NOTARY PUBLIC



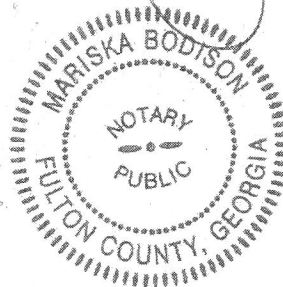
RICHARD BARRON
ELECTIONS DIRECTOR

Sworn to and subscribed
before me this 16 day
of October, 2020.



NOTARY PUBLIC

exp: 3-19-2023



Approved by the State Election Board this _____ day of _____, 2020.

STATE ELECTION BOARD

BY: _____
BRAD RAFFENSPERGER
CHAIRPERSON